



Memorandum # 29/2006

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
Five Middlesex Avenue, Third Floor, Somerville, MA 02145
Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac
Domenic J. F. Russo, *Chairman* | A. Joseph DeNucci, *Vice Chairman*
Kenneth J. Donnelly | James M. Machado | Donald R. Marquis | Thomas Trimarco
Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Disability Retirement Benefits for Veterans, Chapter 157 of the Acts of 2005

DATE: June 15, 2006

On November 22, 2005, the Governor signed Chapter 157 of the Acts of 2005, an Act that provides Section 7 accidental disability retirees with a veteran's benefit. Chapter 157 of the Acts of 2005 became effective on November 23, 2005. Since the passage of this provision, Retirement Boards and members have asked a number of questions. This Memorandum is intended to respond to those inquiries.

What if a retiree dies while the Retirement Board is processing his or her additional allowance under Chapter 157 of the Acts of 2005?

Upon acceptance by the Retirement Board and the local legislative body of either Section 1 or both sections of Chapter 157 of the Acts of 2005, the Retirement Board must notify each accidental disability retiree of a potential additional allowance as a veteran under Chapter 157 of the Acts of 2005. As accidental disability retirees who are veterans are not necessarily identified at their retirement, the duty is that of the Retirement Board to send applications to all living accidental disability retirees to determine veteran eligibility under Section 1 or Sections 1 and 2 of Chapter 157 of the Acts of 2005. If Section 2 is accepted by both the Retirement Board and the legislative body, a retiree's application for the additional allowance must be made within 120 days from local acceptance. The Retirement Board will make payment within one year after receipt of the Section 2 application either in a lump sum or in installments.

Chapter 157 of the Acts of 2005 only becomes effective upon the date of approval by the local legislative body. Upon such date, Chapter 157 of the Acts of 2005 becomes effective and the Retirement Board can begin paying additional allowances. A retiree must postmark or deliver an application for an additional allowance under Chapter 157 of the Acts of 2005 to the Retirement Board in order to be considered for the additional allowance. If the retiree fails to postmark or deliver such application prior to his or her death, the Retirement Board should award no additional allowance under Chapter 157 of the Acts of 2005.

Retirement Boards may complete the application process and verify the veteran status of its retirees prior to the local legislative body accepting Section 1 or Sections 1 and 2 of Chapter 157 of the Acts of 2005. When such process is completed, all living and qualified retirees will be eligible to receive their additional allowances upon the date of acceptance by the local legislative body. However, if a retiree dies prior to the date that Chapter 157 of the Acts of 2005 becomes effective for a particular Retirement Board, there should not be any additional allowances awarded to otherwise qualifying beneficiaries.

The Commission suggests that the Retirement Boards expedite the voting and application process to maximize the number of retirees who would qualify for additional allowances under Chapter 157 of the Acts of 2005.

Examples: Retirement Boards are reminded that there are two distinct definitions of “veteran” dependant upon whether a Retirement Board is determining a retiree’s “veteran” status under Section 1 or Section 1 and Section 2 of Chapter 157 of the Acts of 2005, as described in detail in PERAC Memo # 14/2006.

- Mr. X, a retiree, dies before his Retirement Board accepts Chapter 157 of the Acts of 2005. Is Mr. X’s estate eligible for an additional allowance? **No, the Act did not become effective before Mr. X’s death.**
- Mr. X, a retiree, dies after his Retirement Board accepts both sections of Chapter 157 of the Acts of 2005, but before the local legislative body accepts the Retirement Board’s vote. Is Mr. X’s estate eligible for an additional allowance? **No, the Act did not become effective before Mr. X died even though the Retirement Board already voted to accept the Act.**
- Mr. X, a retiree, dies after his Retirement Board and the local legislative body accept Chapter 157 of the Acts of 2005, but fails to deliver or postmark an application to the Retirement Board. Is Mr. X’s estate eligible for an additional allowance? **No, the Retirement Board did not process his application to determine if Mr. X was a “veteran” before his death.**
- Mr. X, a retiree, dies after his Retirement Board and the local legislative body accept both sections of Chapter 157 of the Acts of 2005 and delivers or postmarks an application to the Retirement Board before his death. However, the Retirement Board failed to process his application prior to his death. Is Mr. X’s estate eligible for an additional allowance? **Yes, Mr. X has submitted an application to the Retirement Board before his death and died after the Act became effective. As long as Mr. X is a “veteran”, his estate is entitled to an additional allowance under the Act.**
- Mr. X, a retiree, dies one day after his Retirement Board and the local legislative body accept both sections of Chapter 157 of the Acts of 2005, but his Retirement

Board completed the application process for eligible retirees prior to the local legislative body accepting the Retirement's Board's vote. Is Mr. X's estate eligible for an additional allowance? **Yes, Mr. X completed the application process with the Retirement Board before his death and he was alive when the Act became effective. As long as Mr. X is a "veteran", his estate is entitled to an additional allowance under the Act.**

How does G.L. c. 32, § 91A interplay with Chapter 157 of the Acts of 2005?

When a retiree receives his or her additional allowance under Section 1 of Chapter 157 of the Acts of 2005, the payments made to the retiree in a particular fiscal year should be included in a retiree's pension for that fiscal year in determining earnings under G.L. c. 32, § 91A.

When a retiree receives his or her retroactive additional allowance under Section 2 of Chapter 157 of the Acts of 2005 in a particular fiscal year, that payment should not be included in the retiree's pension base in determining earnings under G.L. c. 32, § 91A for that fiscal year. The reason for this conclusion is that a Section 2 additional allowance under Chapter 157 of the Acts of 2005 is calculated entirely based upon a member's total years of creditable service, and therefore, the retiree should not be penalized for over earning in a particular fiscal year because the retiree received a retroactive payment in that fiscal year.

When a retiree qualifies to receive his or her retroactive additional allowance under Section 2 of Chapter 157 of the Acts of 2005 and is in debt to the Retirement Board pursuant to G.L. c. 32, § 91A, the Retirement Board should use the retroactive payment to offset the debt owed to the Retirement Board. When the Retirement Board pursues this offset, the Retirement Board should send a letter of notice to the retiree documenting that such action will be taken with regard to his retroactive payment.

Does Chapter 157 of the Acts of 2005 provide additional allowances for beneficiaries pursuant to Option C of G.L. c. 32, § 12(2) and/or G.L. c. 32, § 9?

There are no additional allowances under Section 1 or Section 2 of Chapter 157 of the Acts of 2005 for G.L. c. 32, § 9 beneficiaries whether the member dies in service or after his or her retirement due to an accidental disability under G.L. c. 32, § 7. Specifically, the language of Section 1 provides additional allowances to living retirees, and the language of Section 2 of Chapter 157 of the Acts of 2005 makes the additional allowance retroactive to a living retiree's date of retirement. Therefore, an additional allowance under Chapter 157 of the Acts of 2005 cannot be added to a G.L. c. 32, § 9 accidental death benefit, as it is a benefit that is separate and distinct from an additional allowance given under Chapter 157 of the Acts of 2005.

Option C beneficiaries may qualify for payments under Section 1 or Section 2 of Chapter 157 of the Acts of 2005 if an additional allowance was in effect while the retiree was living or if the retiree postmarked or delivered an application for an additional allowance under Chapter 157 of the Acts of 2005 to the Retirement Board before his or her death, and the retiree otherwise qualified for such additional allowance.